

PROBATE WORKBOOK

..... HOW TO
SETTLE AN ESTATE WITHOUT

Losing Your Mind

OR

Breaking Apart
Your Family



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INTRODUCTION



PROBATE IS AN EMOTIONAL MINEFIELD

When Elsa’s grandfather died, she was surprised to discover he had not only left her the bulk of his estate, but his Will had also named her as his Executor. As an only child of an only child, Elsa had no siblings, cousins, or aunts and uncles to help. She inherited a large step-family whom she didn’t know well, along with a large pool of friends and acquaintances professing to have held close, personal ties with her grandfather.

Within days of his death, people started coming out of the woodwork claiming promises the aging grandfather had made to them. Distant relatives and neighbors asked for personal items – some valuable, some merely sentimental. Everyone had a strong opinion on how Elsa should handle the estate.

Overwhelmed by grief, family pressure, and endless paperwork, Elsa finally reached her breaking point. She invited all the relatives to a meeting at her grandfather’s house and brought in a mediator. The mediator outlined the probate process and the terms of the Will. He explained why Elsa couldn’t legally bestow bequeathed items to people who claimed them but had to follow the Will exactly.

The rest of probate proceeded smoothly, and Elsa was able to settle the estate and sell her grandfather’s house in just a few months.

Few are prepared for the rigors of probate – a detailed legal and financial process that an Executor goes through when settling the final affairs of a deceased person, often in the throes of grief. Only 25% of caregivers and Executors feel “very prepared” to manage probate, according to our 2017 National Care Survey. That leaves 75% of us in the dark after a death.

When we talk with Executors, nearly all speak of the family challenges. Family members, heirs, and beneficiaries do a lot of second-guessing during probate, pressuring Executors and adding to their emotional workload.

In our work, we see this dynamic every day. We work with Executors who are confused, tired and frustrated. They are already juggling work, families, hobbies and more, then life tosses them a giant bowling ball. We see old grudges resurface and family bonds dissolve. During a time of great sadness, when families should pull together, they often split apart instead.

As you move through the months (perhaps years) of settling an estate, you will face heavy family expectations. We want to help. This workbook will guide you through the trickiest parts of probate, especially the emotional issues. We will show you how to spot potential flashpoints and manage them with suggestions for maintaining family relationships while keeping your own emotional health intact.

We hope the information and experiences provided in this book will help individuals going through the probate process cope with their own personal needs, and that this book provides a general understanding of what to expect while administering an estate. While our intent is to share practical guidance and information about the probate process, this book does not provide legal advice, and the authors are not attorneys. Therefore, we strongly recommend that you seek out an attorney if you want legal advice about this process, or any particular issues involving administration of a particular estate.

CHAPTER 1



WHAT IS PROBATE?

In simple terms, probate is a court-supervised process during which the financial affairs of a deceased person are settled. It ensures that all assets of the deceased person are collected and that all administration fees and outstanding debts are paid. After all assets are collected and debts paid, the Executor distributes the remaining assets according to the Will (or state laws if there is no Will). The Executor is also responsible for ensuring the deceased person's personal taxes and estate taxes are filed and paid.

Every state has its own laws and procedures, but they all involve the same basic elements:

- 1 Recording the Will and appointing an Executor or Administrator (if there is no Will)
- 2 Protecting, inventorying, and collecting all estate assets
- 3 Settling estate debts (after determining the solvency of the estate)
- 4 Managing all of the estate assets, following the instructions provided in the Will or intestate law
- 5 Submitting all required notices and filings, typically including an Inventory and an Accounting
- 6 Final distribution of the estate

HOW LONG DOES PROBATE TAKE?

The average probate timeframe is about one year. Even the simplest estates can take months, at a minimum, to settle. Every state has its own processes and timelines for filings and allowing creditors to file a claim after someone dies.

Additionally, many states give potential heirs and beneficiaries a short time to contest the Will or the distribution of assets. If that happens, court procedures could drag on for years – without anyone inheriting anything during that time.

Probate can be time-consuming, and beneficiaries can become frustrated waiting for their inheritance. But, this legal process does give the family peace of mind that their loved one's wishes were carried out correctly when the Executor does things properly. Plus, probate provides legal protection to prevent any type of fraud or wrongdoing by an Executor, creditors, or would-be heirs.



WORKSHEET: GLOSSARY OF LEGAL TERMS

ACCOUNTING – a detailed record of a personal representative's financial management of an estate, which includes all financial transactions regarding the estate.

ADMINISTRATOR – the person legally appointed to administer the estate for someone who died without a Will.

ASSET – property, whether tangible or intangible, that has financial value.

BENEFICIARY OR LEGATEE – a person or organization entitled to receive a portion of the estate under a Will (a legatee is simply a more technical name for a beneficiary).

BOND – a form of insurance that verifies the personal representative will carry out their duties both legally and honestly (some states require the Executor/Administrator to post bond as part of the administration process).

CODICIL – an addition or supplement to a Will that explains, modifies or revokes a Will or part of one.

CREDITOR – a person, organization, company, or government entity that is owed money by the deceased.

DEBT – an amount of money owed by the deceased.

DECEDENT – deceased person.

DEED – a document that confirms ownership or partial ownership of a property or transfers that ownership.

DEED OF TRUST – is a deed for transferring property to a trustee, who holds it as security for a loan (debt) between a borrower and lender. This document is used to finance real estate purchases.

ESTATE – real estate, personal property, and any other assets owned by the deceased at the time of death.

EXECUTOR – the person named by the maker of a Will to Administer the estate and carry out the instruction of the Will.

FIDUCIARY – a person in a position of trust with respect to another’s property, a general term used to refer to an Executor, Administrator, trustee, attorney, or financial advisor.

HEIR/HEIR AT LAW – a person who inherits, or who has a right of inheritance, the property of someone who died – usually a spouse or blood relation.

INTESTATE – dying without a Will.

INTESTATE SUCCESSION – the order, defined by state law, in which a spouse or blood relatives are in line to inherit from the estate of someone who died without a Will.

INVENTORY – detailed list of all assets owned by someone at the date of their death and the value of each asset.

LETTER OF TESTAMENTARY – a legal document issued by the court referencing the appointment of an Executor or administrator of the estate and granting permission for that personal representative to administer the estate. (Sometimes referred to as a Letter of Qualification.)

PERSONAL REPRESENTATIVE – a person appointed by the court to settle the deceased’s estate; a general term used to mean either the Executor or the Administrator of the estate.

PROBATE – the court procedure whereby a Will is officially filed with the court as a public record; also used to describe the court-supervised process wherein a deceased person’s estate is administered.

QUALIFICATION – the process by which the court appoints someone to serve as Executor or Administrator of an estate.

TESTATE – dying with a Will.

TESTATOR – a person who makes a Will.

TRUST – arrangement created by a written document which allows a trustee to manage assets on behalf of a beneficiary/beneficiaries.

WILL – a written document that a person creates before their death, which directs and specifies the management and distribution of their estate after death.

EXECUTOR OBLIGATIONS

Executors are on the hook for following the correct process. If you make a mistake, you could be sued. Here are four common causes of Executor misconduct, and tips on how to avoid tripping over a legal hurdle.

Executor misconduct 1: not recording the Will

An Executor can't do anything with the estate assets until they've been qualified by the court. It's important to get on the probate court calendar as quickly as possible. Some states have time constraints on how quickly an Executor must record the Will and/or get qualified.

Part of the qualification process is finding the original Will, if there is one, and filing it with the court. If you cannot locate the original Will or you're not sure if there is one, the estate may fall under the state's intestate laws (laws that govern the estate when there is no Will). The Executor should exercise due diligence in



locating the original Will. You should go through all of the decedent's papers, call their attorney, check with the decedent's bank for a safe-deposit box, and go to the courthouse to see if a Will has been filed.



CASE STUDY: YOU'RE ON THE HOOK

By the time Bill called us for support, he had mismanaged his father's estate so spectacularly that we couldn't help him recover. Bill didn't handle distribution of assets properly, and he mixed up the estate finances with other accounts.

The estate beneficiaries successfully sued Bill for Executor misconduct, and they had his wages garnished to pay them back for money lost from the estate. Bill subsequently lost his house, his savings and even his marriage.

This is one of the saddest cases we've ever seen of Executor misconduct, but it underscores the fact that probate is a legal process. If an Executor is not following the law, there are legal consequences. You could be personally liable for every dollar owed by the estate to creditors and beneficiaries—and in extreme circumstances, even do jail time.

Executor misconduct 2: failure to find and protect the assets

We've worked with clients who had no idea about some of the assets their parents owned. Common examples include property in other states, expensive jewelry hidden in the false bottom of a trunk, and long-forgotten bonds now worth a small fortune. You must make an exhaustive effort to find and report everything the decedent owned. If something turns up after probate closes—you could have to dive back into more paperwork.

Once you've found everything and made a complete inventory of assets, it's your responsibility to secure the assets so they aren't lost or stolen. Assets must maintain their value between the time of the death and when probate is finally settled.

Executor misconduct 3: bungling the finances

Until probate settles, you must manage the finances of the estate as if it were a separate business. We've seen too many people risk Executor misconduct by mixing money from the estate with other funds.

You must also collect any debts owed to the decedent, including back pay, pension income or Social Security, that were due at the time of the death. Executors must file personal income taxes for the decedent and estate taxes if the estate meets the criteria. All transactions of the estate will eventually be recorded for the accounting to be filed with the court.

Most states also allow Executors to receive “reasonable” compensation from the estate for their services, but here’s the catch—you don’t get to decide what’s reasonable. Each state has a set of guidelines or a schedule that must be followed. We’ve seen Executors pay their personal bills out of the estate’s accounts and give themselves generous bonuses for the hours they’ve put in. This is clear Executor misconduct. Remember, it’s not your money. Everything belongs to the estate, and every dime you spend needs to be approved by the court.

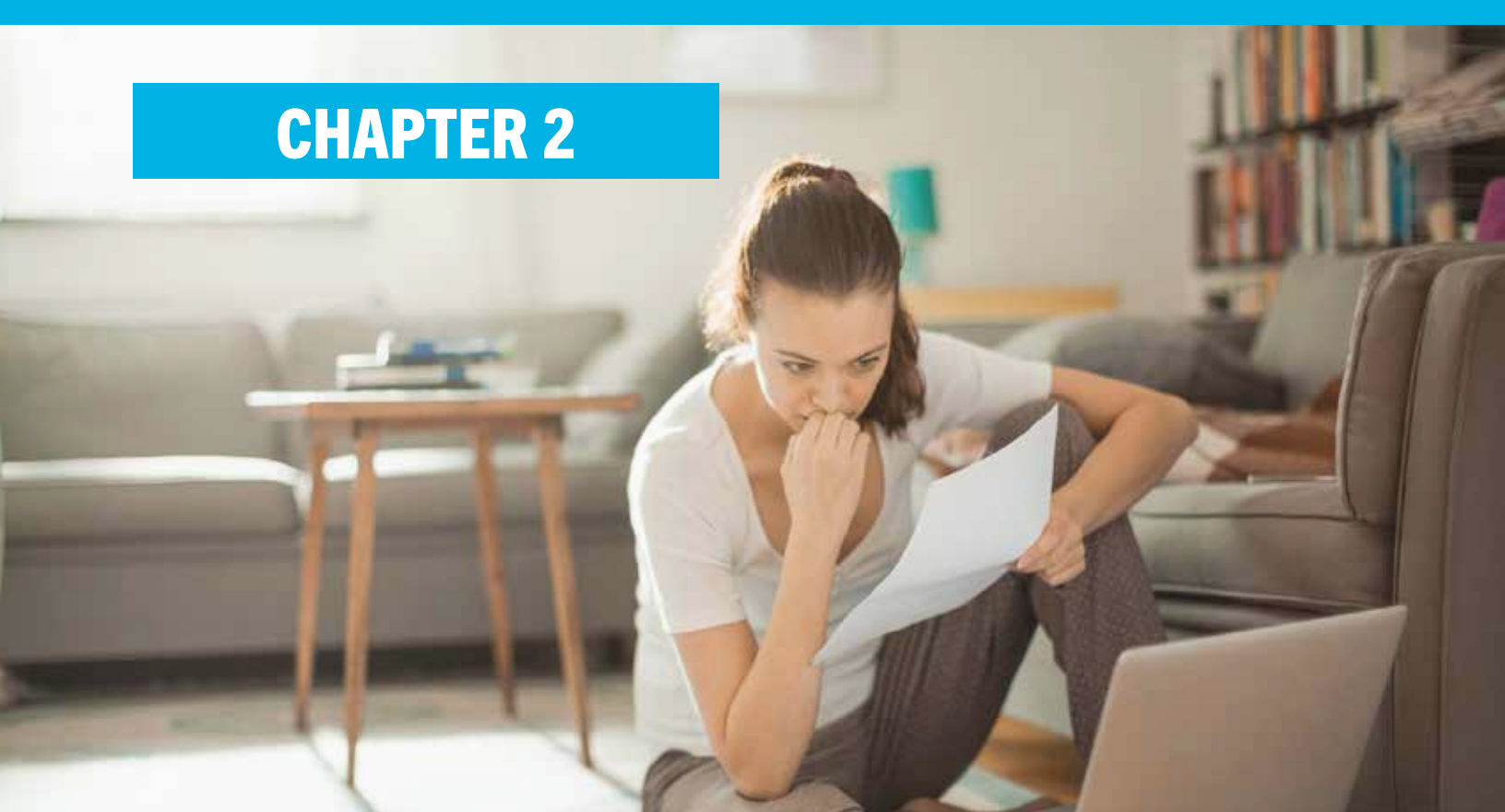
Executor misconduct 4: ignoring creditors and giving stuff away

Technically, distributing assets is one of the primary jobs of an Executor, but many other steps must be completed first. Many Executors make distributions too early or in the wrong order. One of the most important and first steps include determining if the estate is solvent or insolvent, in other words: does the estate have enough money to pay the debts owed? If not, the estate is insolvent and there is an order of payment that must be followed (see Chapter 4).

Now that you have an idea of what’s involved in the process, it’s time to decide whether or not you want to accept this responsibility.



CHAPTER 2



YOU CAN JUST SAY NO

Being asked to be the Executor of someone’s estate after death can stir up a lot of emotions ranging from honor to sadness to anger, depending on your relationship with the deceased and the rest of the beneficiaries.

Try to separate those emotions from the actual job duties, and whether or not you can complete them. Most Executors we talk with expressed surprise by the extent of the work, time, and responsibility that was required, and that they hoped to never do it again.

When your life is already a carefully choreographed juggling of the job, children, relationships, and responsibilities, probate is like someone tossing you a bowling ball.

What many people don’t realize, though, is that you can “just say no” – even if you don’t discover you’ve been named an Executor until after a death.



WORKSHEET: SHOULD YOU ACCEPT?

Here are three things to ask yourself before agreeing to take the job of settling an estate:

1

How much free time do I have?

For the first few months, moving an estate through probate could easily consume 10 to 20 hours a week, especially after adding in travel time to handle various responsibilities. If you work fulltime, have kids at home, or are a caregiver to someone else, you simply may not have the time to take on this job.

2

Do I have a good understanding of finances and business?

An Executor must be highly organized and detail-oriented because there are a lot of moving parts to be managed. Most parts are financial, requiring a comfort level with record-keeping, reconciliation, and statements.

3

Am I willing to commit for the long haul?

It can take a year or longer (sometimes much longer if there are trusts, complex asset structures or disgruntled beneficiaries) before the estate is finally settled and Executor duties are complete. In addition, you will be communicating with beneficiaries throughout the time that the estate is in probate. This can require a thick skin, which can be tiring over a long period of time.

We have found that the ideal Executor has a high attention to detail, good financial awareness and experience, can manage stress, and is conscientious.

AN EXECUTOR'S FAMILY RELATIONSHIPS TAKE A HIT

We've seen many family relationships deteriorate during probate, for several reasons. Often, someone thought the Executor wasn't handling things fairly or moving quickly enough. But, Executors themselves often bring their own stress to bear on the family dynamics.

During the probate process, an Executor is often immersed in stress, anxiety, fear, resentment, and frustration. They can get punchy and act out without even understanding why. They can bring that energy into family dynamics.

If you and your siblings already have a strained relationship, trying to manage probate could do irreparable harm. Be sure you're willing to accept that risk.

MANAGING FAMILY REACTIONS

While you can't predict exactly where an issue might erupt, here are three common trigger points that we've seen with family fights over inheritances.

1

'Mom always liked you best'

Being named Executor can feel like a vote of confidence and a validation of our relationship with the person who died. Not being asked can create resentment from others, which manifests as a deep distrust of the process and lead to constant questioning.

the distribution is unfair, the Executor is the obvious, and easy, person to attack.

2

'Fair' isn't always equal

There's often a gap between what beneficiaries expect to receive and what they actually get. The Executor has the job of distributing estate proceeds according to the Will (or according to the state law if there is no Will). If family members feel that

3

Facing your judge and jury

It's a universal truth: when one person is assigned to a specific task, others are assigned the role of judging that person's performance. Family members with a stake in the process – whether personal or financial – can be harsh critics. Questions can quickly escalate into accusations if they aren't answered, or if the other beneficiaries don't like the answers they hear.



CASE STUDY: IT'S NOT ABOUT THE STUFF

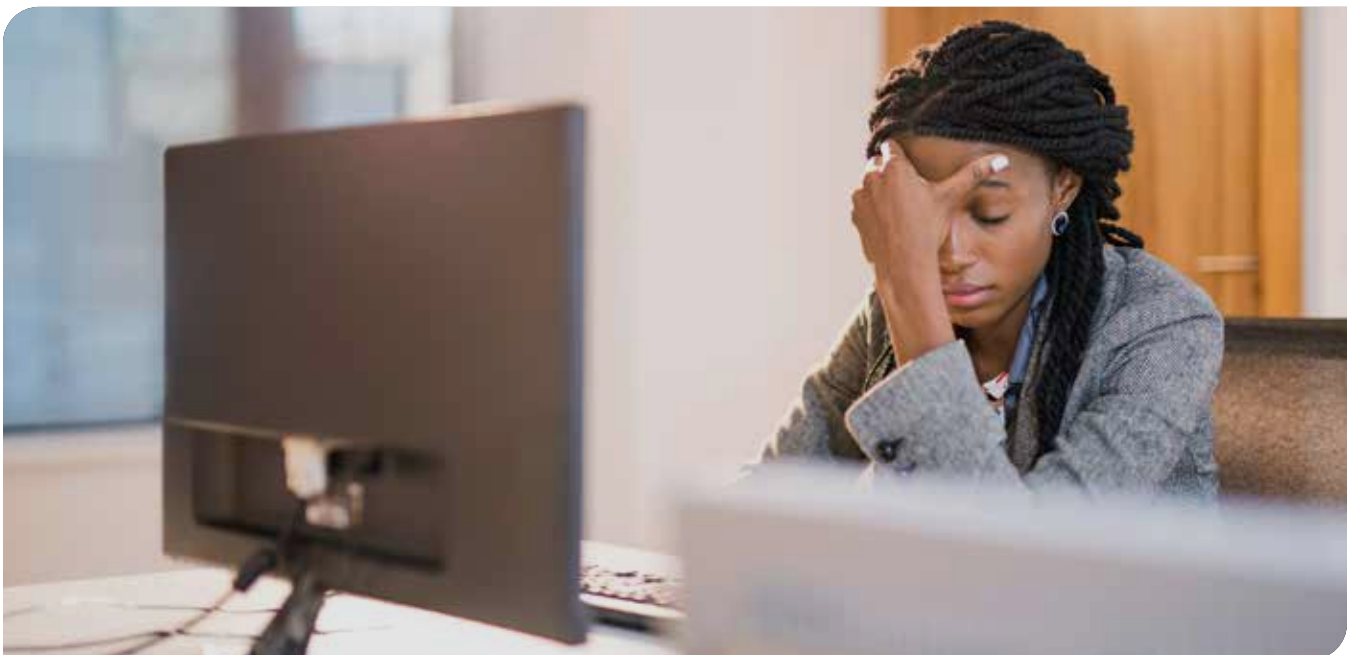
The death of a parent can revive dormant rivalries between siblings, even from long ago. One family we worked with ended up in court over a Bible.

In this case, two of the three sons were named co-Executors of their mother's multimillion-dollar estate. The third brother had distanced himself from the family years earlier because of a feud over the family business. When he discovered he stood to inherit significantly less than his two brothers, he hired an attorney and contested every move they made.

When those maneuvers didn't work, he snuck into his mother's house and stole the family Bible knowing his brothers attached great sentimental value to it.

The two brothers finally got the keepsake back, but only after a long—and expensive—court battle. Still, the disgruntled brother accomplished his goals of rattling his brothers, draining money from the estate and dragging out probate.

Constant criticism puts tremendous pressure on Executors. So much pressure, in fact, that Executors often get trapped in a holding pattern. Fear of causing conflict can be greater than the pain of doing nothing, so the “to-do” list sits. As a result, probate can drag on for years, prolonging everyone's anxiety.





WORKSHEET: WILL YOU NEED AN ATTORNEY?

Depending on your state laws, an experienced professional (like a trained paralegal or CPA) can often assist with many aspects of the probate process, without having to go through the time and costs of hiring an attorney. Make a note of the potential “Three Cs” for the instances when you may need an attorney:

Contracts

Will the estate settlement require legal documents such as contracts, petitions, deeds or disclaimers?

Are there complex assets in an estate, such as commercial real estate or a business with multiple ownership stakes in which contracts and other legal documents will need to be reviewed and interpreted?

If so, list them here:

Conflict

Does your estate have particularly complicated or tense family dynamics that require a legal voice to resolve conflicts?

Are any heirs or beneficiaries contesting the Will?

Are there family members or others who are ready to litigate because they have not inherited assets but feel they should have?

Is there a particularly meaningful or valuable asset that many people want that cannot be resolved?

If so, list them here:

Court

Is the Will confusing or unclear? You may need the court to interpret it.

Are you unable to locate the original Will and only have a copy? Many states require you to file the original Will for probate. If you're unable to locate the original Will, you may have to petition the court to accept a copy.

Is the estate insolvent? Creditors may file claims that require a court hearing.

Are you being forced to go to court due to disgruntled family members or beneficiaries regarding the estate?

Do you have a specific question about how or whether a particular legal requirement applies to your specific circumstance?

If so, list them here:

Bear in mind some states have an attorney-driven probate process. These states require executors to retain an attorney to draft and file the required petitions and other legal documents. Check your state's statutes on what is required for probate.

EXECUTORS ARE THE LAST TO GRIEVE

For someone immersed in grief, it may seem like a welcome relief to dive into concrete tasks like the Executor duties. Unfortunately, staying busy doesn't relieve the emotional impact of a loved one's death.

One of our clients pushed his grief down so far and for so long that when the estate finally settled a year later, he completely broke down (see Chapter 9: Time to Grieve).

We've heard from Executors who say they find themselves crying at odd moments without knowing why – not even related to grieving the death. Some revert to a long-abandoned smoking habit or begin drinking more frequently. Those are common, and unhealthy, ways to respond to an overflowing stress load that's complicated by grief.

Being asked to be someone's Executor is a mark of trust, but it's also a major commitment. Make sure you understand fully what an Executor does after a death before you accept the challenge.

CHAPTER 3



FIRST WEEK: CHANGE THE LOCKS!

In the swirl of emotions immediately after someone dies, there are several pressing duties that Executors must manage. Some can wait, even if family members, heirs, and creditors are pushing for a resolution. Others, however, must be done within the first week – sometimes within days after a death. Here are the top Executor priorities immediately after a death.

WHO PAYS FOR THE FUNERAL?

Funerals are a celebration of a loved one's life, and families want to honor their memory with an elaborate service. But even a minimal funeral, or cremation, can cost thousands of dollars.

Rules vary state by state, but in general, the estate is responsible for paying funeral costs. Even when an estate is insolvent, meaning there are more debts than assets, funeral homes are usually at or near the top of creditors who have Priority of Payments. Even if you think you can't afford a funeral, know that it's one of the first bills the estate will likely pay (usually only up to a certain amount if the estate is insolvent).

Unfortunately, many funeral homes don't want to wait for the estate to begin probate to get paid for their services.

Often beneficiaries or the Executor step up to pay for the funeral out of their own pockets, expecting to be repaid once the estate assets are accessible.

There is no guarantee there will be enough assets in the estate to pay for the funeral or, in cases of insolvency, if there will be enough assets left over after the other creditors with higher priority are paid. Some funeral homes require payment up front. If you choose to pay upfront, be sure to ask for an invoice from the funeral home for reimbursement from the estate. You will also need proof of the method of payment, such as a copy of a check. In the event there are sufficient funds in the estate, you may be eligible for reimbursement. If the estate can't cover the payment, you could be personally liable for the funeral bill.



WORKSHEET: 20 COPIES OF THE DEATH CERTIFICATE MAY NOT BE ENOUGH

Without this critical piece of paper, along with your letter testamentary or letter of qualification, an Executor can't collect benefits, close accounts, or even talk with insurance companies, banks, and other institutions.

Our rule of thumb is to order at least two more than you think you'll need. It's not unheard of for a life insurance policy or a long-forgotten retirement plan account to surface months, even years, after a death. Check these after you send the death certificate:

Required

- Social Security offices
- Internal Revenue Service
- State income tax department
- Utility companies
- Post office (for mail forwarding if the deceased lived alone)

As Needed

- Attorneys
- Banks
- Brokerage firms
- Cell phone company
- Credit card companies
- Creditors
- Life insurance company
- Military benefits
- Mortgage companies
- Motor vehicle administration
- Pension plan funds

SECURING ASSETS

It may sound extreme, but we recommend that an Executor change the locks on the decedent's house and other property as soon as possible. Don't even wait to be officially qualified as Executor by the probate court. You should start securing assets immediately.

An Executor must often move quickly, while grief is still fresh and emotions are raw. It's critical to let everyone know what you're doing and, more importantly, why you're doing it. If you start changing locks and stashing away the good jewelry without communicating with other beneficiaries, they might assume the worst—that you're stealing the inheritance yourself. Once that happens, it can be difficult to regain their trust and their cooperation in what could be a long and trying process for all involved.



CASE STUDY: MY BROTHER STOLE MY INHERITANCE

Sarah and her brother were never particularly close, but she was completely blindsided by his behavior the day of their father's funeral. Her brother lived out of state, and, yes, she was a little surprised that he drove up to the funeral in a U-Haul truck. But, she was too busy with the service and the rest of the family to give it much thought. She didn't even notice that he didn't attend the family gathering after the funeral.

It wasn't until she went to check on her dad's house the next day that she discovered her brother had helped himself to everything he wanted—pretty much everything of value—and left town.

That her brother stole her inheritance (yes, it was stealing because the property belonged to the estate, not him) was not only a huge personal betrayal, but it also left Sarah in a legal bind. As the Executor of her father's estate, Sarah was responsible for securing and inventorying all of her father's assets, including personal belongings. Only after all assets have been gathered and debts paid could she distribute property to the other beneficiaries.

She had to hire lawyers to reclaim the inheritance her brother stole. Then he denied having some of the missing items. The onus was on her to prove he was the one who took them. If Sarah can't get the entire stolen inheritance back, the other beneficiaries could sue her for not doing her fiduciary duty. She could have to compensate them out of her own pocket for anything missing from the estate. In short: It's a hot mess.



WORKSHEET: PROBATE TIMELINE

Use this checklist to help keep track of your duties as you settle the estate.

ASAP (within the first week following death)

- Make funeral and burial arrangements
- Notify close friends and family of death
- Notify the decedent's employer of death
- Order official death certificates
- Secure real estate property
 - Consider putting lights on a timer so the house doesn't look abandoned.
 - Prevent the asset from waste by changing the locks.
 - Maintain the property (keep the grass cut and the gutters clean).
- Secure personal property
 - Keep detailed records of all high-value items, especially anything you removed from the house for safekeeping, so there is never any question of where they are.
 - Collect the keys to vehicles, and make sure they are in a safe place, so they don't get vandalized or stolen.
 - Remove items of value like jewelry, a coin collection, and artwork, to somewhere safe. If they are damaged or lost while the estate is in probate, you could be personally liable to the beneficiaries for their value.
- Secure financial assets
 - Call all financial institutions immediately and inform them of the death.
 - Request a freeze on all of the accounts until you can get qualified as the Executor and begin taking possession of those assets.
 - Make a plan for any direct deposits or automatic bill paying from frozen accounts.

Initial steps (typically within the first 30 days following death)

- Locate the original Will and other important documents and items
- Compile a list of known assets (i.e., property, bank accounts, stocks) and determine how those assets are titled (i.e., solely owned, jointly owned, owned by a trust, etc.)
- Compile a list of the beneficiaries named in the Will and/or heirs-at-law (spouse and/or blood relatives) along with their ages and addresses

- Contact probate court to initiate probate procedures, including getting qualified as Executor or Administrator, and recording the Will (varies by state)
- Cancel credit cards, subscriptions, social media, and any other unneeded services
- Notify mortgage company and other companies of death
- Notify Social Security of death

Next steps (typically within the first 120 days following death)

- Go through qualification procedures to be officially named Executor/Administrator
- Calendar all important probate filings and tax deadlines
- Obtain Estate EIN from the IRS (after qualification)
- Change mailing address to have mail forwarded
- Inquire about safe-deposit boxes
- Gather and take possession of all assets – keep clear records of each one
- Determine and compile a list of all assets/debts of the estate to determine the solvency of the estate
- Prepare probate a administration plan
- Open an estate-specific bank account to liquidate all estate assets into and handle all estate transactions – never commingle estate money with your personal bank accounts
- Liquidate and close all decedent's accounts and transfer to the estate bank account
- Submit an official Notice to Heirs and/or Creditors (time frame and type of notice varies by state)
- Submit Affidavit of Notice (typically within a few months from the date of qualification)

- Change utilities
- Have necessary appraisals performed (i.e., real estate, tangible property)
- Notify Department of Veterans Affairs, DMV, and credit reporting agencies of death
- Notify Life Insurance Companies, IRAs, and other beneficiary designated accounts
- Request refunds owed
- Contact the last employer regarding death benefits
- Request all final balances owed from all debtors/creditors
- Maintain insurance on the house, if applicable
- File Inventory or record all assets (time frame and type of filing varies by state)
- Publish Notice of Death (not required in all States)

Moving toward the finish line (typically within 5-16 months from the date of qualification)

- Clean house and prepare for market
- After determining solvency, pay off any debts, taxes, and claims against the estate (if the estate is insolvent, follow the Priority of Payments outlined by state law)
- Determine and pay fiduciary compensation (varies by state)
- After debts and estate expenses are paid, distribute assets to beneficiaries according to the Will instructions, specific bequests first, or if no Will, according to the state law (varies by state)
- Close bank account
- Accounting Filing (typically due a year after qualification)
- Be sure to check your local and state laws for any additional requirements, as some of these obligations and time requirements may vary by state and local jurisdiction.

KEEPING FAMILY MEMBERS ON BOARD

You can't control family fights over inheritance or insulate yourself from potential blowback from unhappy family members. What you can do is communicate early and often. Here are some guidelines:

1 Tell everyone the rules

Let family members know that there are going to be some decisions that require collaboration. They will have the opportunity to provide input at that time. But there are also going to be decisions that you as the Executor must make alone, and you'll keep them informed of those, too.

2 Trust your instincts

If you know from the outset that family dynamics could complicate probate, consider bringing in an objective third party to help mediate. It doesn't have to be an estate attorney, just someone who understands probate, can remain

neutral and help resolve family fights over inheritance with patience and detachment.

3 Don't allow the process to consume you

Probably the most important thing you can do is to take care of yourself through this difficult and emotional process. Set parameters around the time that you'll focus on probate issues, and then respect those boundaries so you can also keep up with the rest of your life.

At the end of the day, stuff is just stuff. Remember, the most valuable part of any inheritance is the strong bonds that a beloved family member leaves behind.

CHAPTER 4



FIRST MONTH: WHERE'S THE MONEY?

You have all of your important personal documents neatly organized and filed away in an easy-to-find place, right? Right. Seldom does anyone else. Unfortunately, that causes complications for estate Executors searching for probate paperwork.

After a loved one dies, Executors and other family members usually have to scour closets, computers, filing cabinets or even piles of old mail to locate the documents they need to settle the deceased person's estate. You may have to contact professional advisors (such as accountants or lawyers), friends, and associates to determine if a Will exists and locate other key documents.

Here are some tips for identifying the key documents you need for the probate process, and where to search for them.

PROBATE PAPERWORK: WHAT YOU'LL NEED

The first step of settling any estate is determining if a Will exists. If it does, you will need the original signed version – copies typically won't hold up in court. If there is no Will, intestate laws will guide the estate settlement process.

If there is a Will, it will name an Executor. If there is no Will, the probate court will appoint an Administrator. Both have the same duties of settling the estate, and both must be “qualified” by the probate court.

Every state has a different process for qualification. In some states the process is informal – you call the probate court, set an appointment with the clerk and fill out a few forms. In others, the Executor or Administrator must file a petition with the court. If your state laws are complex, you may want to consult with an attorney to make sure you proceed correctly.

Although you don’t need to be qualified to begin securing the estate’s tangible assets, we suggest getting qualified as quickly as possible.



WORKSHEET: REQUIRED DOCUMENTS

- The original version of the Will
- Titles and deeds to personal property such as automobiles and real estate
- Recent bank and investment account statements
- Insurance policies and annuities
- Business ownership documents
- Appraisal valuations of high-value personal belongings such as jewelry and furniture

As you search for probate paperwork, keep any other legal documents you find. You may need those later in the estate settlement process. These can include personal trust documents, divorce decrees, and any legal contracts. When in doubt, save it!

PROBATE PAPERWORK: WHERE TO LOOK

In the house, start your sweep by checking the most obvious places like filing cabinets, fireproof lockboxes (which may be hidden in a closet or under a bed) and recent mail. Important paperwork may also be in a safe-deposit box at the deceased person’s bank or credit union.

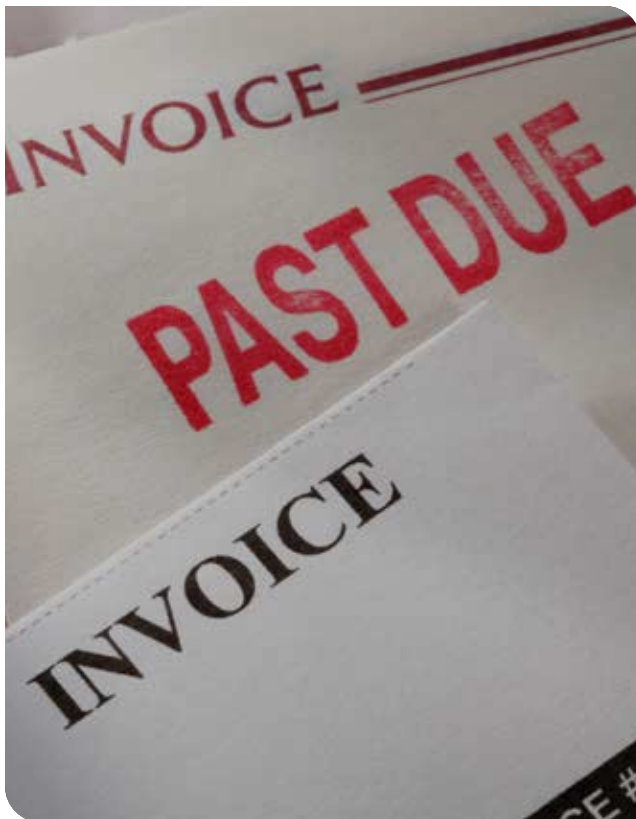
Some people have their attorney hold their original Will. If you know the decedent's passwords, you may also be able to log into their online accounts and review financial account information there. Keep in mind, though, if you have frozen the accounts you may not be able to access them, even online.

If you're unable to find the records you need, expand your search. Look under beds and through drawers in the house. Call trusted friends and family members who may know the whereabouts of important documents or may have been asked to keep a copy of the Will.

WHAT IF THERE'S NO WILL?

If you do an exhaustive search and can't find a Will, don't worry. All states have laws and procedures for how to handle intestate estates (estates without Wills). The probate court appoints an estate Administrator, who has the same responsibilities as an Executor. Until that happens, just focus on compiling a complete and accurate list of the assets. Each state has laws that define how probate is to be handled if there is no Will.

After a loved one dies, it's important to gather important documents quickly – they might accidentally get thrown away! Depending on what you find, you may discover that the estate doesn't need to go through a lengthy probate process after all.



PAY OR DON'T PAY THE BILLS?

There are, indeed, some debts and expenses an estate must pay throughout the probate process. Executors are not personally responsible for any debts – all estate debts are paid with estate assets. In fact, the estate may not even be on the hook – especially if there are more debts than assets overall.

Details will vary by state and locality; always check the laws in your area before proceeding with paying bills. Here is our general process.

Calculate every asset, liability, and debt

In order to accurately calculate solvency or insolvency, the estate must compile accurate records for all assets, debts and other liabilities. These can include:

Assets

- Bank statements
- Stocks and bonds
- Deeds
- Life insurance
- Titles to cars, boats, and other vehicles
- Investment records
- Household items
- Property

Debts and liabilities

- Mortgages
- Property taxes
- Federal, state, and local taxes
- Housing Fees
- Medical bills or hospital fees
- CPA fees
- Funeral costs
- Probate fees
- Personal, student, and other loans
- Credit card, phone, utility, or any other bills that come in the mail
- Other related expenses (check with your attorney and state laws)

Determine whether the estate is solvent or insolvent

Before the estate pays any of those bills, you must determine whether the estate is solvent or insolvent. A solvent estate has enough estate assets to pay all of the estate debts. An insolvent estate has debts that exceed the value of its assets.

The process of determining whether the estate is solvent or insolvent can take weeks or even months. Ask creditors for extensions during this process. If necessary, provide them with a death certificate and a letter testamentary or letter of qualification. If the estate's finances and other records are orderly, or if the deceased kept the Executor updated on their financial records, it may take less time. If the estate's finances are in disarray, it will take time to gather accurate records.

Adhere to Priority of Payments

If the estate turns out to be solvent, then all valid estate debts should be paid. If the estate is insolvent, you may have options for paying those debts. To begin, compile a list of debts in order of Priority of Payments, which is set by state law.

Priority of Payments is the order in which estate debts are paid when someone dies. Not following the debt payment order may cause you to pay debts you potentially would not have to pay.

Start by checking state laws on official government websites. For insolvent estates, be certain to follow the payment order in order. Failure to pay debts in order could make you, the Executor, personally liable for the debt. If you find yourself in this situation, it would be wise to consider retaining an attorney's guidance.



CASE STUDY: THIS BROTHER WANTED HIS MONEY

We worked with a client who agreed to be his father's Executor. He lived nearby and had the time and skills required, so he accepted the appointment. What he hadn't counted on was his stepbrother.

After their father's death, the stepbrother wanted his share of the estate, and he wanted it immediately. He called day and night demanding money, and, at one point, even threatened to commit suicide if his brother didn't turn over his share. The stepbrother started sending daily hate mail to both the brother and the probate professional handling the estate. The situation escalated to the point where the brother called the police, concerned over both his own safety and the threats of suicide.

The stepbrother didn't understand that his hands were tied. The estate had to proceed through certain steps before the funds could be released. Some of those steps included collecting all of the assets and paying the debts of the estate before making distributions to heirs and beneficiaries.

Ultimately, the brother blocked the stepbrother's emails and focused on settling the estate. He let his probate professionals handle the emotional side of the situation and keep track of any escalating threats.

Fortunately, the brother settled the estate quickly. The stepbrother ended up inheriting nearly \$100,000, which he picked up at the probate professional's office. He never had to speak to or hear from his stepbrother again.

WELCOME TO YOUR NEW SMALL BUSINESS

By now you've probably noticed how much probate has in common with running a small business. The probate process focuses heavily on reconciling debts and assets while managing personal relationships along the way— skills every successful small business owner must master. During probate, you must frequently put your emotions aside and apply these management tips from the business world.

Apply business banking guidelines

Just as a business has separate financials from its owners, estate Executors and Administrators are required to handle cash and other estate assets through a separate estate bank account. Never commingle estate funds with your own personal account or other non-estate funds. All of the decedent's liquid or negotiable estate assets are transferred into this separate account.

The estate account pays estate-specific bills, such as debts the decedent had or court-filing fees. Likewise, any payments made to the estate—such as a refund from an insurance company to the estate—should be deposited into this account.

Also, like a small business, the estate must have an Employer Identification Number (EIN) from the Internal Revenue Service (see Chapter 8 for more information on setting up bank accounts).

Start a company filing system

When it's time for an Executor or Administrator to file the accounting for the estate, that report must contain every financial record and payment receipt connected to the estate. Otherwise, you run the risk the accounting could be rejected.

Typically, the filing of the court accounting is quite paper-intensive, as courts generally require paper copies instead of electronic files. That means going back to old-school business filing methods with file folders and filing cabinets.

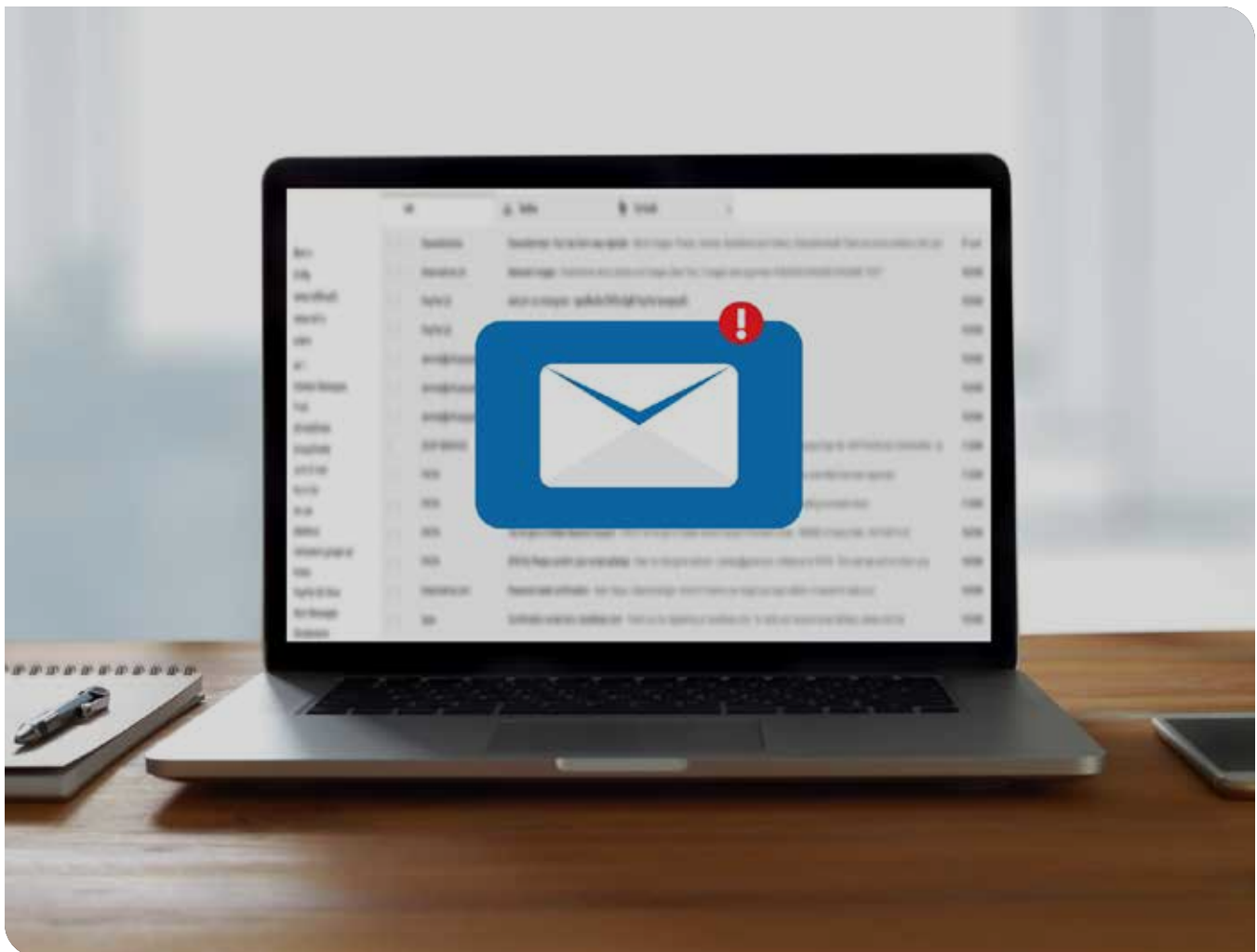
For example, you might keep all property tax records you collect in one folder and federal tax information in another. You should develop a system that makes it easy to find whatever documents you need. Although most courts will not accept electronic files, consider digitizing records to ensure you have a backup copy or in case you need to forward copies to nongovernment entities like family members or debtors.

Create official communications

Even the smallest companies look more trustworthy and official when they use their own email address and logo in communications. You don't need a logo but setting up a separate email account can help you stay organized. Adding an official signature line like, "Executor of the estate of" will signal everyone you communicate with that you mean business.

A signature line makes it immediately clear to anyone who receives your correspondence that you're legally authorized to act on behalf of the estate. Be sure to use this email address for all correspondence with creditors, beneficiaries, and financial institutions.

Setting communications up like this also ensures you have all estate correspondence stored in one place.





CASE STUDY: MAKING EMAILS OFFICIAL

When Rachel served as Executor of her mother’s estate, she set up a separate email address to handle all estate-related matters—whether emailing creditors, financial institutions or professionals who were guiding her through the probate process.

Her email signature included her official title: “Executor of the Estate of Jane Doe.” What Rachel realized is that she was essentially running an official financial entity while managing the distribution of the estate. Her email signature immediately communicated to heirs, officials, and institutions that she was the legal Executor, with all the authority that entails. It also reminded Rachel to “switch hats” from her personal life to her probate duties, further formalizing the

Keep business hours

If you think of administering an estate as your new side business, it makes sense to set up business hours for yourself. You don’t need to hang out a sign advertising when you are open or closed. Scheduling hours in your own mind – like all day every Monday, for example, or two set afternoons or evenings a week – can relieve the stress of probate constantly hanging over your head. A schedule ensures you have regular breaks and don’t feel guilty about trying to squeeze estate settlement work into every spare hour of time.

Rely on your inner HR department

Family members, bill collectors, and others will add to your stress by asking questions, disagreeing with decisions, and pushing for a quick resolution on distribution of estate assets. Think like a small business manager and take the time to provide good communication by explaining the process and keeping everyone updated on how it is unfolding.

You may not have an employee handbook, but you do have a legal process that everyone must abide by. When you communicate that process, everyone can understand that you aren’t the “bad guy,” you are simply adhering to the law.

Just as a business manager, try to keep your dealings with others as professional as possible. Blowing up or venting may feel like a reasonable response to some demands, but the hard feelings created will only hinder your job over the long term. It may be difficult at times but try to listen to all concerns with patience.

CHAPTER 5



FIRST MONTH: SPREADING THE WORD

Notifying heirs, beneficiaries, and creditors via official probate court documents, when required, is one of the earliest steps for estate administration, and it sets the tone for the long process ahead. Too often we see family relationships go sour from badly handled notifications. There is a way to turn this potential negative into a positive, and start building long-term trust with family members right away.

WHO REQUIRES OFFICIAL NOTICE

Check your state and local rules – some jurisdictions require Executors to send a notification to heirs and beneficiaries, others specify that only creditors must be notified, and some list all. It is good practice to send the notifications forms by certified mail for proof of delivery. Then, if ever needed, you'll have proof that the notice was mailed. Typically, you can notify creditors by sending them a copy of the death notice or by placing an ad in the paper (or, in some states, doing both). Keep in mind, there's a limit to the length of time creditors have to make a claim against the estate.

SOFTENING THE BLOW

Depending on your state laws, you'll likely have to use an official form for notifications to send to beneficiaries and heirs, which typically includes the important dates, contacts and whatever other probate and information guidelines the state deems necessary.

Since most Executors are new to court procedures, it's common for them to just fill in the information according to the state's regulations and mail the form thinking they've just checked a big "to do" off their list.

The reality, though, is probate court documents can confuse, frustrate and anger heirs and beneficiaries in several ways:

- 1 The notification forms are usually full of legalese, which can be mysterious and intimidating for recipients.
- 2 For many, this form may be the first they've heard of the death. Combined with the formality of the notice, the shock can be overwhelming.
- 3 The letter may also be how family members discover who's been named Executor. Even under the best of circumstances, this can trigger resentment.
- 4 Not everyone understands the difference between heirs and beneficiaries, so they may be expecting an inheritance when none is forthcoming.
- 5 Once notice is received, typically those parties can request—and receive—copies of any documents filed with the probate court, including the Will, estate inventories, and accounting reports. If everyone starts poring over every court document, the Executor can be inundated with questions and subjected to a lot of second-guessing.

To head off many of these issues, we recommend reaching out personally to everyone concerned before they receive an official probate court document.

We suggest a phone call or email to communicate the death of a loved one in a gentler fashion than official documents. That's also a good time to outline in plain English what people can expect during the probate process. Being proactive and answering any questions early on can go a long way toward instilling trust, smoothing any hurt feelings, and generating support instead of conflict.



WORKSHEET: SENDING NOTIFICATIONS

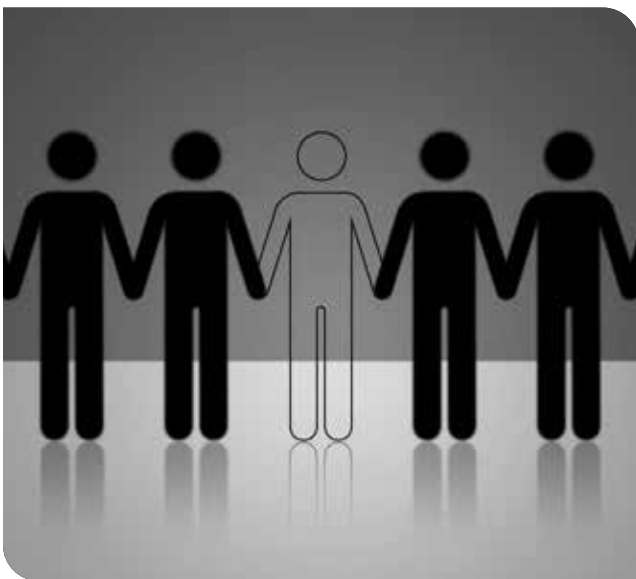
List all next of kin, heirs, and beneficiaries to be notified. Check their names off the list when they have been contacted.

HEIRS	BENEFICIARIES	FAMILY MEMBERS	BUSINESS PARTNERS
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Navigating the world of probate can be tough when everyone is speaking “legalese.” We suggest you familiarize yourself with the common probate terms listed in Chapter 1 before contacting family so you communicate with confidence.

FINDING THE MISSING PERSONS

If there’s no Will, or if the Will is out of date, tracking down beneficiaries and heirs could take some detective work. For example, out-of-date Wills often list beneficiaries who have already died. In that case, you may have to search for beneficiaries of the deceased individuals and notify them (if the Will gives the person’s share to their children). If there’s no Will, you will have to locate the heirs at law.



Make sure you get off on the right foot when you launch probate. As soon as you’re qualified as the Executor or Administrator, obtain your state guidelines about notifications. You’ll still need to send the official probate court documents. If you must give notice to heirs/beneficiaries, remember to make an effort to personalize your communications to help keep relations open and positive.



CASE STUDY: LEAVE NO STONE UNTURNED

A few years ago, we served as Executor for an older man who died alone with no Will and seemingly no family.

To notify his next of kin, we searched his property for paperwork that could point to potential heirs, combed through court records for marriage licenses and birth certificates, and dug through his finances to no avail. We even tried ancestry websites. Every relative we could find had already died.

We finally hired an heir-locating service to expand the search. They tracked down the decedent's step-sister's adopted daughter, who lived in another state. She was mentally incapacitated, so we then had to establish a legal conservatorship for her that could manage the \$200,000 she inherited after all the legal bills were paid.

HEIRS VS BENEFICIARIES

When a relative dies, close family members often assume they are heirs. They probably don't expect to be pushed aside by beneficiaries and may not even know what a beneficiary is. What exactly is an heir, and what is a beneficiary, and how does that affect an inheritance?

Misunderstanding this distinction often causes confusion and pain for families, further complicating an already complicated situation. Here are answers to common questions about what it means to be an heir or a beneficiary, and how the difference affects an inheritance.

What is an heir?

An heir is a blood relative who is potentially entitled to money or property after someone dies, such as a spouse or child (in the absence of clear instructions by Will). State law outlines an exact order in which heirs inherit property up to a certain point – not every heir necessarily inherits.

The word “heir” is often used in cases where a person has died without a Will, leaving the Administrator of the estate to figure out who rightfully inherits the deceased person's property. Keep in mind the term “heir-at-law” is just the official term for being an heir – there is no difference between the two.

What is a beneficiary?

A beneficiary is a person or organization who gets money or property because they are specifically named in someone's Will or a trust. Charities or even your mother's childhood friend Anna can be beneficiaries. If you are named in a Will, you are considered a beneficiary.

Can you be both a beneficiary and an heir or vice versa?

Here is where it can get confusing. You can be a beneficiary who is also an heir, but not all heirs are beneficiaries. For example, if your mother wills you her pearl necklace, you are a beneficiary because your mother specifically mentioned you in the Will. But, you may be considered an heir as well because you are your mother's blood relative.

On the other hand, if your father leaves everything to his best boyhood friend, Bubba, he is considered a beneficiary. Bubba cannot be an heir since he is not a blood relative, even if your father considered him "family." You are, in fact, an heir in this situation since you are a blood relative. However, Bubba will probably still get all of Dad's money since you were not named in the Will.

Blood relatives will all inherit something, right?

Just because someone is an heir doesn't mean they will inherit anything. In some states, heirs are supposed to be notified of a death regardless of whether they will receive anything. Because a Will outlines the instructions of the decedent, it can completely overlook an heir and give everything to anyone named in the Will, blood relative or not.

If there is a Will, beneficiaries like Bubba will often have more rights to the assets left. When there is no Will, the assets go to the first heir in line, who are often spouses or adult children. The process continues until a living blood relative is found.

Spousal rights are a major exception. Let's say you're expecting to inherit something after your elderly father dies, and, in fact, he leaves you everything in his Will. But, he remarried years ago and did not put your stepmother in the Will. Because spousal rights are considered in many states, your stepmom may have rights to claim a percentage of the estate.



CASE STUDY: WHEN FAMILY LASHES OUT

Shelly’s adult stepchildren had always been cold toward her. She knew she would probably face trouble when their father died without a Will and she was named Administrator of his estate. As his spouse, Shelly had spousal rights to a portion of the estate.

As Shelly expected, the children lashed out immediately. They contested the estate, filing legal protests asking for items from the house she and her husband shared for over 20 years. The demands were minor – one daughter wanted a stuffed animal she claimed had been hers in childhood. However, the battle was less about “getting something” and more about causing trouble for Shelly.

Concerned she might make a misstep and wanting to make sure she claimed her share of the estate, Shelly hired an attorney to handle the estate administration process. The firm handled the logistics, taking all the paperwork off Shelly’s plate so she could focus on her emotions. When Shelly went to the office, she frequently dissolved into tears as she talked about the legal battle.

Ultimately, Shelly and her legal team had to appear in court to face the stepchildren. The judge awarded Shelly her rights to the estate. That was a legal “win,” but, sadly, the battle ensured that Shelly and her stepchildren never spoke again.

CONTESTING THE WILL

Anyone with a valid interest in an estate can contest (question the contents of) a Will. That’s one reason Executors are required to notify heirs in some states. Contesting a Will is expensive and time-consuming for both sides. If you truly believe something isn’t right about a Will, such as a forged signature or undue influence in the writing and signing of the Will, that is a valid reason for contesting. A contested Will generally requires the help of attorneys to resolve.

CHAPTER 6



FIRST FOUR MONTHS: SECRETS AND SURPRISES

When you've been cleaning out estates for over 15 years, as we have, you learn that it's not uncommon to uncover a shocking revelation about a deceased relative among their personal belongings. As the Executor, you must decide how to deal with these secrets.

BE PREPARED FOR WHAT YOU MAY FIND

Anyone cleaning out a house should be prepared to discover a few surprises. Here are six common secrets we find.

Forbidden love

Love and lust are common secrets in families. We've found love letters tucked into boxes, shoes, and gloves. Usually, these are long-ago affairs, though discoveries can reveal recent infidelities. Once, we found photos of a client's recently deceased father and his secret same-sex lover. The evidence never tells the whole story, which is why it's important to not jump to conclusions.

Identity secrets

We once found documents proving that our client's grandfather was adopted—a secret that affected multiple branches of the family tree. We've found contracts, bank accounts, credit cards and other evidence of people maintaining dual identities. A stack of check stubs might be evidence of secret child-support payments—and the existence of an unknown sibling, cousin or uncle. You might even find evidence of a second family. Identity discoveries can have legal implications, and the existence of an unknown child may affect inheritance.

Pornography

If you find child pornography, which is illegal, you or whoever is in charge should call the police. If you find dirty magazines, skin flicks, sex toys or other adult entertainment, respect privacy as you would with any secrets in families. While it may seem shocking to you that your grandmother had a robust sex life, others might find the discovery only slightly embarrassing. If you discover these toys in front of Grandma, be an adult and move on.

Illegal drugs

We often find of marijuana in sock drawers and closets. We occasionally come across harder stuff like cocaine, pills, and heroin, as well as dangerous paraphernalia, like needles. You not only have to decide whether to tell other family members, but you need to safely dispose of the drugs. You should step away and call the authorities if you find anything illegal. Never try to transport illegal drugs, even if you plan to go straight to the authorities. If you get stopped, things might get complicated.

Stolen objects

During a house cleanout, we once found a pair of paintings that had been passed down from a long-dead relative. We sent them to an auctioneer, who traced them back to an art museum. They were stolen from the museum during the 1940s. The discovery debunked the family story that the relative was a banker who received the works as loan collateral. Turns out he was an art thief. Luckily, a third party with subject expertise broke the bad news to the family for us.

Treasure

It's not uncommon to find money, gold bars and other valuable assets stashed in homes. We once found an Olympic medal buried beneath a pile of stuff. The homeowner won it the javelin throw decades earlier. Finding a suitcase full of cash can be a pleasant surprise, but just because it's a happy family secret doesn't mean you shouldn't use discretion. Spreading the news among extended family and friends could create hard feelings, and, apart from the obvious (keeping it safe), the owner may have had good reason to hide it. If the cash looks suspicious, call the authorities. Dirty money is often traceable and can cause more trouble than it's worth.

SHARING FAMILY SECRETS

Regardless of what you find or learn about secrets in families, it's important you respect the privacy of those involved. Don't spread gossip or let the news get away from you. This is true even for seemingly harmless or happy discoveries. Here are our guidelines.

- 1** Share information, not shock. Wait until you are calm, rational, and have had a chance to consider your options before you share. Stick to the facts, not your interpretation. Everyone has a different moral compass and something that shocks you might seem perfectly acceptable to someone else.
- 2** Choose words wisely. We suggest something like, "I don't know if you're aware of this or not, but I wanted to share it with you." Ease into the topic and bring it up calmly. Others will likely appreciate your honesty.
- 3** Seek help. Facts are facts, but when they evoke strong emotions, people tend to lash out at the messenger, especially if that person is a family member. A qualified third party, such as a clergy member or therapist, can deliver difficult news with authority and objectivity.
- 4** Stay off social media. You may want to share your discovery, but Grandma may not have wanted it out there. There are also identifying codes on many mobile pictures that can help a thief find the item's location.



WORKSHEET: WHAT TO DO WITH DANGEROUS ITEMS

As Executor, you will likely oversee or assist during an estate cleanout. This can be dangerous work, especially in older houses that have basements, garages, and tool sheds containing chemicals or other toxic materials. Share this list with anyone helping with the estate and post it in the rooms of the house during cleanout.

Guns, dynamite, war collectibles, ammunition, explosives

- Always assume all weapons are loaded and/or primed
- Leave the area
- Call someone who is trained and licensed—an off-duty police officer or gun handler from a local gun shop

Medication and other medical waste

- Do not touch medical waste with bare hands
- Call the local health department to ask about proper disposal measures
- Do not flush or throw away medications, return them to a pharmacy for proper disposal

Needles, syringes, sharps, lancets

- Do not touch with bare hands or plastic gloves that can be pierced
- Collect in an approved sharps container for disposal

Human waste

- If it fits in a toilet, flush it. For larger volumes, it's best to call a professional, such as Stericycle.

Paint, bleach, motor oil, fertilizer, and other chemicals

- Always assume that any unmarked liquid or powder is hazardous.
- Check with your local municipality — some dumps provide special drop-off sites for products that are flammable, corrosive, reactive, or toxic.

Fireworks

- Soak them in water to disarm them, then throw them away.
- Even a clean, well-kept house can be a minefield of hidden hazards. If you do uncover a danger — be it explosive, toxic, or illegal — turn to an expert for help.

SURPRISE DEBTS AND DEALING WITH CREDITORS

Nobody likes to talk about their debt. You're likely to uncover a few secrets when digging through the finances. In fact, you may find the estate is insolvent. An insolvent estate requires special handling when it comes to managing the bills. Executors may think proactively paying bills is responsible, but that actually create a complicated mess. Why? Because of something called Priority of Payments.

Insolvent estates are required to pay certain debts in a specified order according to state law and paying them willy-nilly can cause big problems. If you have determined that the estate is insolvent, here are some tips to help you decipher which debts to pay first to avoid headaches later.

Always check your state and local laws

Priority of Payments differs depending on state laws. The most reliable sources and documentation are from a state government website.

Gather all financial and other records

To get a sense of the estate's solvency, track down all records that pertain to the estate (see Chapter 7 on Finding Assets) like bank statements, insurance information, tax records, etc.

Take care of number one

An insolvent estate must always pay bills in order. Common first priorities include estate administration costs, funeral fees, medical expenses, and taxes. Credit card bills tend to appear lower on the list. Don't be swayed to pay credit card after death just because creditors are calling!

Ensure you are going in order

Paying out of order will result in the estate, and maybe you, being liable for paying expenses it may not otherwise have to pay. For example, let's say you pay for priority number eight before all other priorities. You are now responsible for paying any debts on the list that fall between priority one through seven, when you may not have had to pay them at all!



DON'T LET CREDITORS HARASS YOU

Most creditors will attempt to collect on debts shortly after someone has died, and often will go to family members for the money. Should the estate prove to be insolvent, creditors fear they will have to write off the debt or settle for getting a portion of the debt back. No matter how aggressive collectors may be, wait to pay those credit cards until after establishing solvency of the estate. Warn other family members not to respond either with payment or information.

Credit card debt is another place to research your state laws. In some states, for example, a spouse is only liable for shared credit card debt if his name actually appears on an account or record. In other states, he may be liable whether his name is listed on the account or not.

Executors have to do some legwork, research state laws, and even consider consulting with a probate professional to clarify what debts need to be paid when dealing with creditors.

CHAPTER 7



FIRST FOUR MONTHS: FINDING AND VALUING ASSETS

As you begin your search for assets in the house, forget checking under the mattress - have you looked inside the tank in the back of the toilet? Seniors often create secret hiding places for money. Finding their treasure troves when they're gone requires patience and a little detective work.



WORKSHEET: WHERE TO LOOK FOR CASH

Here are the top 10 secret hiding places for money we've found when emptying out houses.

1

The toilet tank: There's plenty of room in the toilet's water tank for a jar or some other watertight container stuffed with cash or jewelry. While you're at it, make sure there's nothing taped to the inside of the lid.

2

The freezer: Cold, hard cash isn't just a cliché. It's a way of life for many seniors. We've found everything from credit cards to gold coins frozen inside blocks of ice and plastic zipper bags filled with cash at the bottom of ice trays.

- 3 The pantry: Look inside every cereal box, flour bag, and coffee can. Pour out the contents if necessary so you can see what's at the bottom.
- 4 The bookshelves: Yes, you want to check for those hollowed-out bibles and dictionaries that you can buy online. You also have to shake out every book on the shelf. We've found everything from \$100 bills to dividend checks stashed between the pages.
- 5 Under the floorboards: This is a very common place to hide valuables, especially in older houses. Check for loose boards under throw rugs, new nails that look out of place, and loose edges around wall-to-wall carpets.
- 6 Old trunks: Steamer trunks used in World War II had special holes built into them for wives to pack mementos for their husbands who were going off to fight. Check under the lining and look for a false bottom.
- 7 Closets: You have to go through every piece of clothing and every box. We've found hundreds of thousands of dollars in shoeboxes, cigar boxes and inside the pockets and lining of old jackets.
- 8 Bureaus: We've found envelopes full of cash or other valuables taped to the bottom or the back of just about every type of furniture, but chests of drawers offer unique hiding places. Women's vanities usually have at least one drawer with a false bottom to hide the good jewelry.
- 9 The backyard: Yes, people still bury canning jars filled with rolled up \$20 bills in the yard. If they've been there a long time their location could be hard to spot, but a metal detector should pick up the lid if they aren't buried too deep.
- 10 Birthday cards and church envelopes: Seniors often preload these with cash and then forget to follow through.

Hiding places are unique to each house and individual. Never assume a deceased relative didn't have money or other valuables, even if they lived very modestly. Older generations took great pride in being frugal and saving as much as they could. In fact, the ones who never talked about money are usually the ones we discover who have the most hidden.

FINDING UNCLAIMED ASSETS

The TV infomercials aren't scams – there actually are millions in lost assets waiting to be reclaimed across the country. Our older generation is often hesitant to talk about money, so it's not uncommon for a relative to die without leaving clear records of what they owned. Unclaimed lost assets could include checking accounts, safety deposit boxes, stocks, dividends, tax refunds, and more. It's an Executor's responsibility to search for any unclaimed assets the estate may own. Here is where to look, how to uncover the records, and how to apply to reclaim these assets.

Gather the required information

In order to reclaim any lost assets, first, make sure you have gathered the following personal data for the deceased person.

- 1 A list of every name the deceased ever went by, including full legal names, nicknames, maiden names, aliases, etc.
- 2 A list of all known addresses where the decedent previously resided
- 3 An original copy of the death certificate
- 4 The deceased's social security number
- 5 The Letter of Qualification or Letter of Testamentary for the personal representative of the estate

Where to search

To begin, use Unclaimed.org [<https://www.unclaimed.org/>] — the website of the National Association of Unclaimed Property Administrators (NAUPA) — to help you find each state's website for unclaimed assets. That will most commonly be a state commerce or treasury department site. Check each state the decedent has lived in to see if there are unclaimed funds spread across different states. You can also use the NAUPA-created MissingMoney [<http://missingmoney.com/>] database to search multiple states at once. On either site, the state you select will direct you to state-specific websites and guidelines

on how to find and reclaim claim lost assets. Look for a tab that refers to unclaimed property or a search bar to enter identification information of the deceased.

Anyone can make an unclaimed asset search, but only a personal representative — an Administrator or Executor — can claim the property on behalf of the estate with the proper documentation. Don't worry, you will still receive any assets you are entitled to if you are named as a beneficiary or heir.

When to hire an asset search firm

If you get a call from an asset-finder (people who specialize in tracking down assets), more than likely the estate has some amount of unclaimed assets. The call itself may not be a scam — but beware the exorbitant fee they require to reclaim lost assets for you. For example, let's say your grandmother recently died. After the funeral, an heir-finder company contacts you saying they have found \$17,000 in unclaimed assets. Here's the catch: they want 40% of it. That's \$6,800 fee for adding only \$10,200 to the estate. Paying that fee may not be the most responsible management of the estate.

If your time is at a premium, hiring a search company may be worth the cost for you. Remember, the Executor is responsible to all of the beneficiaries, and, further, beneficiaries may have to agree to the decision to use one of these companies.

Providing a search service is perfectly legal (if you have concerns you can contact the State Department to learn if the company is fraudulent). But, there's no reason you can't work around them and claim the assets yourself — remember that you have access to the same public databases that they do.

Figuring out what it's worth

Dad bored you with his stamp collection when you were a kid. Now, you might be tempted to just toss or donate those stamps when you're cleaning out Dad's house. That could be an expensive mistake since stamps have skyrocketed in value in recent years. If you're cleaning out an estate, you'll want to get a professional appraisal on few specific items — Dad's stamp collection is definitely one.

The fact is a family house full of collectibles may have a lot of hidden value or you may just be fooling yourself. The only way to know for sure is to hire a professional appraiser when you are downsizing or cleaning out an estate. A pro can separate the emotional attachment from the true monetary value, and identify what your antique furniture, great-grandmother's china set, and the house itself are really worth.



WORKSHEET: WHAT ITEMS ARE WORTH APPRAISING

Generally speaking, you will want an appraisal for any item in the estate that someone in the family believes is worth something. When it comes to collectibles, there are usually specific experts for each type of appraisal needed. Create your personal list of the following items with potentially high value to have appraised:

Jewelry (even costume)

Coin collections

Baseball cards

Stamp collections

Vintage toys

Comic books

Furniture over 100 years old, or by name designer

Automobiles (these can usually be valued using a widely accepted used-car valuation guide such as the Kelley Blue Book – hiring a professional isn't always necessary)

Any disputed items. If family members disagree about an item's value, paying a third party to settle that debate may be worth avoiding a dispute that rankles for years.

Getting property appraisals

You may think you can use the tax assessment value or have a few local real estate agents walk through the property to provide estimates, but that's not sufficient for cost basis purposes. You must have an appraisal performed on the property by a certified appraiser to validate the true value of the property as of the date of death. Ask for an appraisal to establish the date of death value on the property, something most appraisers will be familiar with.

Any property that has a high value and has appreciated significantly over the years may qualify for the step-up in basis tax benefit. That qualification is determined by the appraisal that establishes the date of death value of the property.



CASE STUDY: STACY'S WINDFALL

Stacy's mother died, she inherited the house her mother bought decades ago for a few thousand dollars. She wasn't sure the property was worth much more than that but hired an appraiser anyway to provide the probate court with an accurate estimate. It turned out the property value had risen to \$100,000.

Property appraisals are a specific type of appraisal that can save the property owner a lot of money. Specifically, Stacy's appraisal helped her qualify for a tax benefit called a "step up in basis." This benefit prevents having to pay capital gains taxes on significant growth in inherited property value when sold.

CHOOSING THE RIGHT APPRAISER

Make sure to get an accredited professional who specializes in the type of appraisal you need. If you want to appraise a house or other real estate property, you might ask a trusted real estate agent or mortgage broker to recommend an appraiser they work with regularly.

Associations can also be a good place to start your search. The American Society of Appraisers and the Appraisers Association both have an online database where you can search for accredited appraisers with various specialties in your area. You can also find experts able to conduct various types of appraisals over the internet using photos and information you provide. If you're looking to appraise something that's a collectible or somewhat rare—like Marlon Brando's autograph—look for professionals who specialize in those types of appraisals.

If you think you may sell the item, don't hire an appraiser who is also the best potential buyer (for example, the top antique dealer in your town shouldn't appraise your grandmother's Stickley chairs). Any appraiser/buyer will have an inherent conflict of interest and may tend to appraise the item at a lower value.

When in doubt, call in an expert. Bear in mind that while you may think Mom's antique root beer bottle collection is worthless, her heirs may expect to sell it for a high price. If there is any debate over the value of an item or collection, it's wise to get a certified appraisal to avoid a family dispute.

CHAPTER 8



FIRST YEAR: DISTRIBUTING ASSETS

Your brother wants to stop by next week and pick up Dad’s workshop tools. Your sister could really use an advance on her inheritance to pay her son’s college tuition bill. It sounds reasonable, but don’t make assets distribution too early or in the wrong order. Those mistakes may cost you, personally. During the probate process, there is a method for dividing everything among all beneficiaries. Here is how to properly distribute estate assets, including household items, real estate, and cash.

DISTRIBUTING MEMENTOS, FURNITURE, AND OTHER TANGIBLE ASSETS

Tangible assets are things you can physically touch that don’t have an ownership title (as real estate and bank accounts do). Examples include furniture, antiques, and jewelry. While state laws vary, in general, you can start distributing smaller specific bequests after an estate inventory and appraisal are completed and solvency is determined. These smaller bequests, often sentimental items, may be made once there’s confirmation of sufficient cash in the rest of the estate to cover any outstanding taxes and bills.

These smaller asset distributions shouldn't have a material impact on zeroing out a decedent's accounts. If Grandma bestowed her good china on your cousin Betsy, passing that along to Betsy (after you know the estate is solvent) will probably be fine. On the other hand, if your father's Will directed that a valuable painting goes to your sister, it's probably better to wait a while longer and ensure there are enough other liquid assets to cover all outstanding liabilities. If there are insufficient liquid assets, the value of the sold painting could be a way to cover outstanding debts.

SETTLING HOUSES AND OTHER REAL ESTATE

In most cases, asset distribution of real estate – a house, vacation property or land – depends on how the property is titled, although laws vary by state. If a deed is only in the name of the deceased, that property usually transfers to either the beneficiaries named in the Will or the heirs, depending on state law. If the Will directs the property be sold, the Executor will sell the house and distribute the proceeds to the beneficiaries.

If the Will identifies a specific person to inherit the property, that asset will usually pass to the named beneficiary. However, if there are outstanding debts and bequests need to be satisfied first, those debts may force liquidation of the property.

DIVVYING UP CASH, STOCKS, AND BONDS

Executors are required to handle cash and other liquid assets through a separate estate bank account. In order to establish that you'll need the death certificate, letters of testamentary or letter of qualification from the court, and an EIN from the IRS. All of the decedent's liquid or negotiable assets should be transferred to this account.

The cash in the estate bank account may be used to pay any estate-specific bills, such as valid debts that the decedent owned, or court filing fees. As the Executor, you may be able to sell any of the stocks, bonds, or other securities to raise the cash necessary to manage the estate while it's in probate.

When it comes to distributing liquid assets after probate settles, ask the beneficiaries how they would like to receive their share. Some might prefer cash, while others might want the stock. As long as asset distribution is equitable based on the current market value of the stocks and bonds, it doesn't matter how these are divvied up.

What about your brother's workshop tools and your sister's cash advance? As long as your workshop isn't exceptionally valuable (as in, a professional grade specialty shop), your brother can take the tools once you've determined the estate is solvent. Your sister, however, may have to wait.

Waiting protects you against personal risk. If you distribute assets before paying off all estate debts, and the estate was to come up short in liquid assets after taxes and creditors are paid off, the Executor can be on the hook for those debts.

KEEP THE PEACE: FIVE METHODS FOR DIVIDING FAMILY PROPERTY

A family member's Will doesn't always leave clear directives for the distribution of mementos and other keepsakes. Often vague instructions direct the Executor to "divide equally." Some of these items may not have a lot of financial value, but we've seen family members collide over them nonetheless.



As the Executor managing the estate, you have an opportunity to navigate this potential minefield in a way that keeps peace in the family. We recommend setting up an objective way to parcel out the goods fairly. Here are some strategies we've found to be successful.

Hold a family auction

During a family auction, everyone who has a legitimate claim to the estate gets an equal number of tokens. Poker chips or Monopoly money work great! Then, family members bid on the items they want. One brother can blow his entire wad claiming the Chippendale side table, while a sister might choose to spend hers on smaller items.

Take turns choosing

With this system, you can draw lots or go from oldest to youngest to decide who goes first. However, you determine the order, be sure to change it up every round to make the process

as fair as possible. The person who goes last in the first round gets to go first in the second round, etc. Then, if Bill ends up with the etching Sally really wanted, they can negotiate a trade between themselves after all of the selections have been made.

Hold a family pre-sale

This is a great option if you plan to use an estate sale to clean out the house. The estate sale company can come in and price all of the items, then family members come through to select the items they want to keep before the sale is open to the public. The value of the items is deducted from each person's share of the overall estate.

Get an appraisal

If one or two items are significantly more valuable than everything else, coming up with a truly fair distribution can be difficult. That's when it's time to bring in an appraiser to provide an objective market value for higher-end items (see Chapter 7: Finding and Valuing Assets). When a value is established, the person who wants the Picasso can have its value deducted from his or her share of the estate, pay the other family members for it, or it can be sold and the proceeds divided among heirs.





CASE STUDY: WHEN BROTHERS GO ROGUE

Becky was named Executor of her deceased father's estate and the Will stipulated that everything should be divided equally between Becky and her three brothers.

Becky lived in another state and hoped to rely on her brothers to inventory the estate because they lived in their father's house. The brothers were supposed to separate their belongings from their father's and list all of the items that now belonged to the estate.

Instead, they created a mess that made it impossible for Becky to accurately distribute her father's assets. The brothers left the items they wanted to keep off the asset list. They also held an estate sale, but never provided Becky with a list of items sold or for how much money.

Although Becky didn't want many of her father's items, she did want to make sure the estate was divided fairly among all four siblings. Instead, she had to take her brothers to court for their actions. Ultimately, Becky's brothers were found responsible for mismanagement and had to replace the value of the missing and sold items so that the estate could be divided fairly.

Hire a mediator

Unfortunately, we've seen too many families that can't even agree on who should get Grandma's silver-plated salt server. If that's the case with your family, your best option is to remove yourself from the process by hiring a professional mediator or an estate attorney to come in and handle the distribution of personal property.

This is a time when emotions are running high and old wounds that may have been long forgotten are reopened. An independent third-party won't add to the emotional baggage and could even help defuse some of the deeper issues that have been triggered by the process. The most important thing is to keep the family intact. Everything else is just stuff.



WORKSHEET: DISTRIBUTING ASSETS

List the beneficiaries and the main assets each will receive. Check off each asset and name after those have been distributed.

NAME

CASH

ITEMS

_____	_____	_____
_____	_____	_____
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THE FINAL ACCOUNTING

Once the assets have been fully distributed, the Executor is responsible for filing the accounting report to settle the estate. The process culminates in the “final accounting of the estate,” which is a business-type financial statement that itemizes the estate finances. Probate won’t close until every penny has been allocated correctly, properly documented, and has received court approval.

If you don’t get it right the first time, your final accounting filing may be rejected. While state laws vary, here are the four key areas that the court—and beneficiaries—will be watching

1 Assets

You already know that your first order of business is to take a complete inventory of all of the estate’s assets. Through the course of probate, the value of some assets could fluctuate. You’ll also have to establish the value of each of those assets at the time of the death. Some can be fairly easy to track. For example, liquid assets, such as stocks or bonds, may have appreciated (or depreciated) over the course of probate. Financial statements will show those movements over time. For fixed assets, such as real estate, jewelry, cars or antiques, you’ll need to establish their fair market value at both the beginning and the end of probate. If you’ve sold any of these assets, you’ll have to show the sales price and any difference between the original appraised value and sale price. Often, the largest single asset in an estate is a house. If the house is sold by the estate, it’s important to get certified appraisals of its value as soon as possible after the death to account for any price difference after the sale, especially if the house was sold below its appraised value.

2 Income

The Executor must collect any income due to either the decedent at the time of death or the estate during probate. For example, if part of the estate includes an ongoing business or rental properties, you’ll need to continue collecting the receipts from those entities until they are either sold or the properties are transferred. For the final report, all income will have to be listed separately according to the revenue source. Any income owed to the decedent at the time of death, such as tax refunds, uncashed checks, or outstanding loans that were due, even if they were not yet collected, is usually recorded as an asset of the estate. Income received by the estate after the death will be recorded separately.

3

Disbursements

Every dime spent by the estate during probate will have to be itemized. You'll need to record the date of each disbursement, who received it, what it was for (such as house insurance, property taxes, court fees, etc.) and the amount.

Since you need a clear paper trail, we recommend you avoid using cash. Write a check for everything, even the few dollars you spent to make copies of the Will.

An Executor has broad discretion for most of the smaller disbursements, such as those required to manage the estate. Where we've seen people get into trouble is when they have paid creditors and/or beneficiaries too quickly and out of order, especially in insolvent estate situations.

4

Distributions

This is the culmination of your hard work—your moment of reckoning. After all assets have been valued, bills paid, and specific bequests awarded, you'll have to show how the residual will be distributed among the beneficiaries. If you've sold everything and all that's left is cash, your task will be easy.

You'll just follow the Will or the state inheritance laws and cut checks for everyone based on their allotted percentage.

Where this gets complicated is when other types of assets are involved, such as savings bonds that haven't matured yet, or the vintage Chevy that appraised for \$30,000 but nobody really wants. You'll have to convince the court and the beneficiaries that you've devised an equitable distribution because one unhappy recipient could protest how his or her share was calculated. That can send the entire process back to the drawing board. After that, you'll also need to pay taxes on the estate. While this may all sound like a lot of work, you don't need to be a CPA to complete the required accounting for most estates. But you do need to be meticulous in your recordkeeping. In our experience about half of all final account statements get kicked back by the court for adjustments

Sit back, take a deep breath. You're done!

CHAPTER 9



EVERYTHING ELSE

Did we say you were done? Well, some estates are trickier than others and will have details to cover that we haven't gone into here. Also, many accountings are rejected by the court, which means the Executor has to go back over the paperwork and prepare it again, correcting mistakes. Here are some common reasons an accounting can be particularly problematic, and what Executors can do to minimize the risk of a rejected accounting.

PROBATE OUT OF STATE

Going through probate can be particularly costly and time-consuming for an out-of-state Executor. If you decide to accept (and you don't have to!) we have some helpful advice to save you time and money.

The rules vary, but all states allow for out-of-state Executors. Some have certain caveats, however. An out-of-state Executor may be required to be related to the decedent by blood, marriage or adoption. An in-state resident may need to be appointed to serve as an "agent" or co-Executor to accept legal papers and deal with specific probate matters.

Some states require out-of-state Executors to pay for a probate bond to insure the beneficiaries against negligent or intentional bad acts by the Executor.

However, it's not typically the state rules that make living out of state most challenging. Applicable laws may only require an out-of-state Executor to show up once in person—usually to qualify as Executor by the probate clerk.

The more cumbersome part is dealing with the tangible property held in the estate, such as real estate, automobiles, collectibles and personal belongings.



CASE STUDY: LONG-DISTANCE RISKS

Remember Sarah and her brothers? Sarah was an out-of-state Executor of her parents' estate. When it came time to sell their Virginia home, she had a problem: her three brothers lived together in the house and didn't want to leave. They wouldn't answer the door when realtors came to see the property. Some of her deceased parents' belongings that were supposed to be sold as part of the estate had mysteriously disappeared.

Living in Michigan, Sarah couldn't just drive to the house to hash it out with her brothers. She had to take many flights to Virginia over the two year-long probate process in order to take inventory, organize her parents' assets, and arrange the sale of the property. She eventually called a law firm to help convince her brothers to vacate the home.

Sarah found it almost impossible to manage these duties as an out-of-state Executor, given the lack of cooperation and agreement among the beneficiaries. Dealing with the decedent's financial institutions is also easier for those who live nearby.

Though it can still be time-consuming, these tips can help out-of-state Executors streamline their time and costs.

Enlist professional and/or personal help

A probate professional can help Executors understand and adhere to the state's laws and procedures. A local real estate agent can help navigate many of the logistics of appraising and selling the property. A trusted friend or relative who lives near the decedent's property can help with tasks like showing an automobile to prospective buyers.

Plan any trips carefully

Maximize your time while in town. Schedule required in-person meetings in advance and make a to-do list of everything that needs to be accomplished while you're there.

Stay organized

Being an out-of-state Executor demands a higher overall level of organization. You will probably deal with most people—including the probate office, financial institutions, real estate agents, and creditors—by phone, mail or email. Keep all records in a designated paper or digital folder and keep close communication with any professionals or trusted friends who are helping. Given the potential extra hurdles of trying to settle an estate from afar, it may be best to politely decline being Executor if you live in another state.

You can always offer your assistance without having to take on the full legal responsibilities of being an out-of-state Executor.

THREE COMMON MISTAKES EXECUTORS MAKE

Acting as Executor of someone's estate is a lot more than just following the Will or the state law. With Executor responsibility comes potential legal liabilities if the assets aren't handled properly. Here are three of the most common mistakes we've seen Executors make, and tips for how to avoid them. Recordkeeping must be scrupulous, with paper copies of every transaction. Communications with beneficiaries should be clear and consistent. Everything related to the estate and probate should be put in writing and sent to everyone at the same time. Keeping everyone up-to-date on what's happening with their inheritance can help allay concerns and resentments down the road.

1. Misunderstanding fiduciary responsibilities

Once you've been appointed the Executor of an estate you also become a fiduciary, and expectations around your actions are high. As a fiduciary, your responsibility is to manage the money on behalf of the estate, which can get emotionally dicey for everyone, especially if

you're also one of those heirs or beneficiaries.

Unfortunately, being fair and honest isn't enough. You must be able to prove that all of your actions and motives are transparent, objective, and completely above board, and this is where we've seen too many Executors get tangled up.

2. Mismanaging real estate

Sadly, there are plenty of scammers and flippers that make their living combing through death notices and hitting grieving relatives with hard sales pitches. Executors who are overwhelmed with their grief and the job in front of them are often quick to take the first offer they receive, especially if there is little cash in the estate or if the house is in disrepair.

Executors, however, have a fiduciary responsibility to make their best effort to receive the "fair market value" of that asset. While you do want to move quickly on a house sale (insurers are loath to provide coverage on empty houses, and upkeep can be expensive), you also want to move deliberately to maximize the value of the house.

First, you'll need to have the property appraised, then talk to a trusted real estate professional about the best way to move forward. If the house has a lot of deferred maintenance, is it better to invest estate assets in repairs before putting it on the market or sell it as is?

If the property is to be sold and the proceeds distributed through the estate, the Executor decides on the sale price and the amount of the commission. In order to head off questions from the beneficiaries about those numbers, it's wise to be up front and communicate with the beneficiaries/heirs so all questions can be answered before anything is signed.

3. Not securing tangible assets

Yes, your father willed his valuable coin collection to your brother. But, when your father died, the ownership of that collection doesn't immediately transfer to your brother. The collection becomes the property of the estate, and it's the Executor's responsibility to ensure the safekeeping of the collection until all assets of the estate have been collected, and assets can be distributed.

We've seen this legal hurdle trip up many Executors, especially when multiple family members have keys to the decedent's house. It's very common for even well-meaning beneficiaries to come in and help themselves to whatever they were promised. If there are valuable antiques, collections or artwork left unprotected in the house, it can become a huge problem. This is why we recommend immediately changing the locks of the house and securing anything of high value.

WHY PROBATE COULD DRAG ON

Most estates close within a year, but yours may not fall into that easy category. We've worked on cases that dragged on for multiple years, leaving Executors exhausted, families in pieces and estates depleted. What makes the difference between a few months of probate versus years of turmoil? It boils down to asset complexity and family issues. Here are the five most common causes we've seen of extended probate.

1 Complicated estates

It can take years to unravel a particularly large estate or one that includes a wide variety of assets. If the decedent left behind a private business that controlled multiple limited liability corporations (LLCs), owned foreign property or held assets that are hard to value such as a stable of race horses, it could take months of forensic accounting and a cadre of outside appraisers to put a price on an estate like that. Liquidating those assets if they need to be sold could take even longer.

2 Estates that owe federal taxes

Executors have nine months to file estate taxes (if the estate meets the taxable criteria). While filing the taxes doesn't necessarily take long, it can be months before the Internal Revenue Service (IRS) processes the return. In fact, the IRS website asks that filers wait at least four months after filing the return to even request an estate tax closing letter. It could take another four to six months for the return to be reviewed and approved. If the IRS doesn't like the math, the agency will kick the whole thing back, and you'll have to start over.

3 Estates with many beneficiaries

Large families may include beneficiaries scattered around the globe. Tracking them down, notifying them, and getting their signatures on necessary documents can take time. We worked with an estate in which one of the beneficiaries had died making his children beneficiaries. That's not unusual, but in this case, one of the daughters was estranged from him and the rest of the family. She didn't challenge the estate, but she refused to acknowledge the notifications and ignored documents that required her signature. She managed to drag probate out for an extra six months.

- 4** **Disgruntled family members**
Family issues are the most common reason for dragging out probate that we see. Usually, this occurs when one of the decedent’s heirs isn’t named as a beneficiary. Courts recognize heirs as “interested parties” in the estate, giving them the right to challenge the Will, the Executor, and the disbursement of assets. They seldom win, but a constant barrage of petitions, suits, and countersuits can hold up the process for months or even years.
- 5** **The wrong person acting as Executor**
Unfortunately, we see this situation pretty regularly. Despite best intentions, some people simply aren’t suited to the stress and demands of being an Executor. We worked with one man who was so paralyzed by his grief and overwhelmed by the task of probating the estate, he simply shut down. He was so worried about making the wrong move, that he didn’t move at all. In this case, probate dragged on for two years, which simply prolonged everyone’s pain unnecessarily.

Once the process hits any of these speedbumps, there’s not a lot an Executor or the probate court can do to speed it up. The best strategy is to try to anticipate potential problems and give beneficiaries a heads-up so they know what to expect. Open and honest communication is your best option for ensuring a smooth probate process—no matter how long it takes.

CONCLUSION



TIME TO GRIEVE

Once you are really, truly done with the probate paperwork, don't be surprised if unexpected emotions begin to emerge. We often see Executors overwhelmed by grief after probate ends – even years after a death when they thought they were “over” the loss.

The truth is, Executors must dive quickly into the logistics after a death. Managing the complexity of “doing” doesn't leave much emotional space for “feeling.” This doesn't mean an Executor doesn't feel emotions during probate, but those emotions are often pushed aside by the tasks at hand.

Survivors of traumatic events speak of the disconnect between function and emotion. Those in airplane crashes talk about the moments after the accident, and about how they were able to push their fear aside to just keep moving, maybe even swimming. Their instincts and adrenaline prioritized getting out of there instead of sitting with that fear.

In fact, giving in to those emotions often results in panic. Victims overcome by fear often thrash about in the water, yelling, “I'm drowning!” instead of swimming a few feet to safety.

Only afterwards, when survivors are huddled under warm blankets and surrounded by aid workers, are the emotions free to come forward. That's when they start shaking, crying, and

sharing the story of how terrified they felt.

Granted, probate is nothing like surviving an aircraft accident. But, Executors do face a sudden and ongoing stream of brand-new, complex tasks that must be completed by a deadline. Simply learning how to do them is demanding enough, and there are very real and scary ramifications for doing them badly.

Even while performing probate tasks well, Executors can earn the wrath of family members. Many Executors develop coping skills for ignoring their grief, thinking they are fine. They may say, “I’ve already grieved,” or “his death really didn’t affect me the way I thought it would.”

The problem is, this state of pushing emotions aside isn’t sustainable over the long term. It’s like holding your breath – you can do it for a while, but eventually, that breath will find a way to get out.

Many of these same Executors find themselves crying at the grocery store, or in a parking lot, saying, “I don’t know why I’m such a mess, I thought I was over this loss.”

Finishing probate opens up some space, and your emotions will want to rush to fill it. We suggest giving yourself permission to really feel those emotions.

This will help you empty your “stress tank” and begin to heal. The harsh reality is that you’ve just completed a Herculean task – one nobody is likely to thank you for. The person who you did this favor for is gone, never to express their appreciation. You’ve built an immense store of valuable skill and knowledge that you (hopefully) will never use again.

So, be kind to yourself during this time. If you are a shopper, treat yourself to a little retail therapy. If touch is meaningful to you, indulge in some massages. Maybe regular walks outdoors are how you relax or spending time with good friends. Whatever is meaningful to you, now is the time for a reward and your own recognition of a job well done. Self-care is truly the critical last step to probate.

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